NHS
Leeds
Clinical Commissioning Group

Decision support framework for defining the boundaries between privately funded treatment and entitlement to NHS funding, under a range of circumstances

NHS Leeds Clinical Commissioning Group

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Name of responsible committee/individual:	Quality and Performance Committee
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Target audience:	Primary and secondary care clinicians, individual funding request panels and the public
Document History:	Leeds CCGs x3 policy

Introduction

This framework supports Leeds Clinical Commissioning Group (CCG) in defining the boundaries between privately funded treatment and entitlement to NHS funding, under a range of circumstances. This framework applies to any patient where the CCG is the responsible commissioner for NHS care. It equally applies to any patient needing medical treatment where the Secretary of State has prescribed that the CCG is the responsible commissioner.

This document is intended as an aid to decision making. It should be used in conjunction with Leeds CCG policies on Individual Funding Requests and associated decision making frameworks.

Entitlement to NHS Care

NHS care is made available to patients in accordance with the commissioning policies of the CCG. However, individual patients are entitled to choose to pay for their own healthcare through a private arrangement with doctors and other healthcare professionals. A patient's entitlement to access NHS healthcare is not usually affected by a decision to fund part or all of their healthcare needs privately. However, there are certain limitations if they are "topping up" their care privately (see below).

An individual who has commenced treatment that would have been routinely commissioned by the CCG (NHS-commissioned healthcare) on a private basis can, at any stage, request to transfer to complete the treatment within the NHS. In this event, the patient will, as far as possible, be provided with the same treatment as the patient would have received if the patient had had NHS treatment throughout. However, the CCG will not reimburse the patient for any treatment received as a private patient before a request is made to move back into the NHS.

Patients are entitled to seek part of their overall treatment for a condition through a private healthcare arrangement and part of the treatment as NHS-commissioned healthcare. However, the NHS-commissioned treatment provided to a patient is always subject to the clinical supervision of an NHS treating clinician. There may be times when an NHS clinician declines to provide NHS-commissioned treatment if he or she considers that any other treatment given, whether as a result of privately funded treatment or for any other reason, makes the proposed NHS treatment clinically inappropriate.

An individual who has chosen to pay privately for an element of their care, such as a diagnostic test, or consultant opinion is entitled to access other elements of care as NHS-commissioned treatment, provided the patient meets the CCG's commissioning criteria for that treatment. However, at the point that the patient seeks to transfer back to NHS care:

- the CCG can request the patient be reassessed by an NHS clinician
- the patient will not be given any preferential treatment by virtue of having accessed part of their care privately,

AND

- the patient will be subject to standard NHS waiting times

A patient whose private consultant has recommended treatment with a medication normally available as part of NHS-commissioned care can ask his or her NHS clinician to prescribe the treatment as long as:

- the NHS clinician considers it to be medically appropriate in the exercise of his or her clinical discretion
- the drug is normally funded by the CCG

AND

- the NHS clinician is willing to accept clinical responsibility for prescribing the medication

There may be cases where a patient's private consultant has recommended treatment with a medication which is specialised in nature and the patient's GP is not prepared to accept clinical responsibility for the prescribing decision recommended by another doctor. If the GP does not feel able to accept clinical responsibility for the medication, the GP should consider whether to offer a referral to an NHS consultant who may prescribe the medication as part of NHS funded treatment. In all cases there should be proper

communication between the NHS consultant and the GP about the diagnosis or other reason for the proposed plan of management, including any proposed medication.

Medication recommended by private consultants may be more expensive than the medication options prescribed for the same clinical situation as part of NHS treatment. In such circumstances the NHS GP, should follow prescribing advice from the CCG eg use of generic prescription. This advice should be explained to the patient who will retain the option of purchasing the more expensive drug via the private consultant.

The CCG will *not* fund care, at the request of the patient, in the private sector in an NHS Trust or from an Independent provider:

- even if some components of treatment could have been accessed via the NHS.
- as an alternative to NHS care where NHS eligibility criteria or thresholds are not met

Providers will not be paid for any activity with regards this framework which has not been approved in advance.

The policy should also be read in conjunction with the NHS (Charges to Overseas Visitors) Regulations 2015 (as amended) [1].

Parallel provision of NHS and privately funded care

NHS care is free of charge to patients unless regulations have been brought into effect to provide for a contribution towards the cost of care being met by the patient. Such charges include prescription charges and some clinical activity undertaken by opticians and dentists. These charges are permitted form of "co-payment". The specific charges are set by Regulations. These charges have always been part of the NHS.

Patients are entitled to contract with NHS trusts to provide privately funded care as part of their overall treatment. It is a matter for NHS trusts as to whether and how they agree to provide such privately funded care. However, NHS trusts must ensure that private and NHS care are kept as separate as possible. Any privately funded care must be provided by an NHS trust at a different time and place from NHS commissioned care. In particular, Private and NHS funded care cannot be provided to a patient in a single episode of care at a NHS hospital.

A patient who wishes to "top up" their NHS funded treatment with additional privately funded care or treatment may only do so where it is possible to separate the NHS funded treatment or procedure from the privately funded treatment or procedure. <u>It is not possible to combine aspects of NHS funded and privately funded treatment as part of a single episode of care or treatment, unless providing the private care separately would pose an overriding risk to patient safety.</u> An example of this would be where a patient in an immunosuppressed state is being nursed on an isolation ward. It may be appropriate for privately funded care to be provided to him on the ward rather than moving them to a private ward, if moving them would pose a serious safety risk.

In any instance where a clinical decision has been taken that a patient should receive NHS funded treatment and privately funded treatment as part of the same procedure in order to avoid an overriding risk to patient safety that would arise out of separate provision, the Medical Director should be notified in advance, unless this is not practicable. In such cases the Medical Director should be informed as soon as possible.

Examples:

- A patient who is receiving NHS funded chemotherapy wishes to pay privately for an unfunded cancer drug. They will be able to receive the additional private cancer treatment as well as the NHS chemotherapy as long as the two can be separated (as would be the case if the private cancer

[1] http://www.legislation.gov.uk/uksi/2017/756/contents/made (accessed 22.2.18)

treatment is given in a different place, such as a private care suite within the hospital, and at a different time to the chemotherapy treatment).

- A patient who is to undergo an NHS funded cataract operation wishes to pay privately for a different lens, which would be inserted during the cataract operation. They will not be able to have the additional private treatment because it cannot be separated from the NHS treatment (the private procedure would have to be done at the same time and in the same place as the NHS cataract surgery).

When a patient wishes to pay privately for additional treatment not usually funded by the CCGs, the patient will be required to pay all costs associated with the privately funded episode of care. This includes costs of all medical interventions and care associated with the treatment include the costs of assessments, inpatient and outpatient attendances, tests and rehabilitation. This also includes any costs associated for any complications of treatment where these are solely a consequence of the privately funded treatment, except where the cause of the complication is unclear or the patient is admitted under emergency care (for example poor aesthetic outcome or post-operative infection).

Any privately funded arrangement which is agreed between a patient and a healthcare provider (whether a NHS trust or otherwise) is a commercial matter between those parties. The CCG is not party to those arrangements and cannot take any responsibility for the terms of the agreement, its performance or the consequences for the patient of the treatment.

Co-funding

The NHS cannot “top up” a patient’s private treatment. Co-funding and forms of co-payment, other than those limited forms permitted by Regulations, are currently *ultra vires*. The CCG will not usually consider any funding requests of this nature.

If a patient is advised to be treated with a combination of drugs, some of which are not routinely available as part of CCG commissioned treatment, the patient is entitled to access the NHS funded drugs and can consult a clinician privately for those drugs which are not commissioned by the NHS. Funding of all high cost cancer drugs is a matter for NHS England.

If a patient being treated privately requires a combination of drugs or other treatments to be administered simultaneously, some of which are funded by the NHS, and there are no patient safety issues, the patient must fund *all* of the drugs and the other costs associated with the proposed treatment.

Patients in such circumstances can apply under the individual funding request process for the drugs or treatments that are not usually funded by the NHS, however, the fact that a patient has been prepared to fund part of their own treatment does not constitute an exceptional circumstance.

If a combination of drugs or other treatments is to be administered simultaneously, some of which are funded by the NHS, but where there are concerns about patient safety, an individual funding request is required setting out the reasons why the clinician feels that the patient would be put at risk in separating private and NHS care. The CCG will seek expert opinion concerning issues of patient safety in this context.

NHS continuation of funding of care commenced on a private basis

If a patient commences a course of treatment privately that the CCG would not usually fund, the CCG will not automatically pick up the costs of the patient either completing the course of treatment or receiving on-going treatment if they can no longer fund this privately.

The patient is, however, entitled to apply for funding by means of an individual funding request. However, where the CCG has decided not to fund a treatment routinely, the fact that the patient has demonstrated a benefit from the treatment to date (in the absence of meeting the criteria for exceptionality) would not necessarily be a proper basis for the CCG to agree to support the treatment in the future as this could result in the CCG approving funding differentially for persons who could afford to fund part of their own treatment. Each case will, however, need to be considered on its own merits. If the funding request is

approved, the CCG will not reimburse the patient for any treatment received as a private patient before the IFR was successful.

Other

Individual patients who have been recommended treatment by an NHS consultant that is not routinely commissioned by the CCG under their existing policies would need to apply for funding by means of an individual finding request. They are also entitled to ask their GP for referral for a second opinion, from a different NHS consultant, on their treatment options. However, a second opinion supporting treatment which is not routinely commissioned by the CCG does not create any entitlement to NHS funding for that treatment. The fact that two NHS consultants have recommended a treatment would not usually amount to exceptional circumstances.

Monitoring requirements

A provider does not need to seek prior approval for private treatment which is provided separately from NHS care. The CCG expects private providers to keep records of NHS patients who have also received parallel private treatment.

The CCG will expect NHS providers to routinely report details on the number of patients who sought additional private care alongside NHS care, the indications and how the trust put separate facilities in place. This is to ensure there was no NHS subsidy of the private care.

Endpoints

Following completion of the agreed treatment, a proportionate follow up process will lead to a final review appointment with the clinician where both patient and clinician agree that a satisfactory end point has been reached. This should be at the discretion of the individual clinician and based on agreeing reasonable and acceptable clinical and/ or cosmetic outcomes.

Once the satisfactory end point has been agreed and achieved, the patient will be discharged from the service.

Requests for treatment for unacceptable outcomes post treatment will only be considered through the Individual Funding Request route. Such requests will only be considered where a) the patient was satisfied with the outcome at the time of discharge and b) becomes dissatisfied at a later date. In these circumstances the patient is not automatically entitled to further treatment. Any further treatment will therefore be at the Leeds Clinical Commissioning Group's discretion, and will be considered on an exceptional basis in accordance with the IFR policy.

References

Department of Health. Handbook to the NHS Constitution March 2013 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480482/NHS_Constitution_WEB.pdf (accessed 21.3.18)

Department of Health. Guidance on NHS patients who wish to pay for additional private care. March 2009. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/404423/patients-add-priv-care.pdf (accessed 21.3.18)

BMA. The interface between NHS and private treatment: a practical guide for doctors in England, Wales and Northern Ireland Guidance from the BMA Medical Ethics Department May 2009 https://www.bma.org.uk/-/media/files/pdfs/practical%20advice%20at%20work/ethics/interfaceguidanceethicsmay2009.pdf?la=en (accessed 21.3.18)

Appendix A: Version Control Sheet

Version	Date	Author	Status	Comment
Draft 1	1.8.13	Jon Fear	Draft	For legal comment
Draft 2	13.08.13	Beechcrofts	Draft	Legal comments
Draft 3	30.08.13	Fiona Day	Draft	Acceptance of legal comment
Draft 4	9.9.13	Fiona Day	Draft	Addition of cover sheet
Draft 5	18.11.13	Fiona Day	Draft	Addition of endpoints, change of review dates to april 2016
Draft 6	29.11.13	Fiona Day	Draft	Addition of Providers will not be paid for any activity with regards this framework which has not been approved in advance., addition of dissemination plan
Final	18.5.15	Fiona Day	Final	Reviewed policy 18.5.15, addition of link to interim NHSE guidance april 2013
Final	08.06.15	Hempsons LLP	Final	Amended – corrections and clarifications to section **Parallel provision of NHS and privately**
Final	21.3.18	Hempsons LLP, Fiona Day	Final	Amendments to one CCG from 3; references checked and updated. Addition of statement on overseas visitors.

Appendix B - Equality Impact Assessment

Title of policy	**Decision support framework for defining the boundaries between privately funded treatment and entitlement to NHS funding, under a range of circumstances.**	
Names and roles of people completing the assessment	Helen Lewis, Head of Planned Care and Long Term Conditions	
Date assessment started/completed	25 April 2018	25 April 2018

1. Outline	
Give a brief summary of the policy	NHS v Private
What outcomes do you want to achieve	Clarity about pathways where NHS vs private funding may be relevant

2.Analysis of impact			
This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to; eliminate unlawful discrimination; advance equality of opportunity; foster good relations			
	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	**Are these negative or positive?**	**What action will be taken to address any negative impacts or enhance positive ones?**
Age	No		
Carers	No		
Disability	No		
Sex	No		
Race	No		
Religion or belief	No		
Sexual orientation	No		
Gender reassignment	No		
Pregnancy and maternity	No		
Marriage and civil partnership	No		
Other relevant group	No		

If any negative/positive impacts were identified are they valid, legal and/or justifiable? **Please detail.**	

4. Monitoring, Review and Publication			
How will you review/monitor the impact and effectiveness of your actions	n/a		
Lead Officer	Dr Simon Stockill	**Review date:**	9 May 2018

5.Sign off			
Lead Officer	Dr Simon Stockill, Medical Director		
Director		**Date approved:**	9 May 2018